

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MELINDA ELLIS,

Plaintiff,

V.

ALESSI TRUSTEE CORPORATION;
DAVID ANTHONY ALESSI; and ALESSI
& KOENIG LLC,

Defendants.

Case No. 3:09-cv-00428-LRH-WGC

ORDER

16 This is an order in response to plaintiff Melinda Ellis's ("Ellis") February 26, 2016
17 motion for an order to show cause related to defendant Alessi & Koenig, LLC's ("A&K")
18 failure to abide by a stipulated stay of judgment. ECF No. 236.

19 I. Facts and Procedural History

20 This action has an extensive litigation history. In brief, Ellis purchased real property
21 within the Arrowcreek subdivision in Washoe County, Nevada. Arrowcreek is governed by a
22 homeowner's association ("HOA") which charges dues to all residents that live within the
23 subdivision. Ellis became delinquent and defaulted on her HOA dues. Defendants
24 Alessi Trustee Corporation ("ATC")¹ and A&K,² acting as the various participants in collecting
25 delinquent HOA dues on behalf of the HOA, sent multiple letters to Ellis regarding the debt.

²⁷ ¹ Defendant ATC is a company located in Las Vegas, Nevada, and primarily operates as an adjustment and collection services business which works with Homeowner's Associations to collect on delinquent HOA dues.

²⁸ Defendant A&K is a law firm in the State of Nevada which acted as attorneys for the Homeowner's Associations when delinquency notices were sent out.

1 Ellis did not pay her back HOA dues. Eventually, a notice of default was recorded on her
2 property along with a notice of trustee's sale.

3 On July 15, 2009, after the notice of trustee's sale, Ellis filed a complaint against
4 defendants ATC, A&K, and David A. Alessi ("Alessi")³ alleging three causes of action:
5 (1) breach of fiduciary duty; (2) unfair debt collection practices in violation of
6 15 U.S.C. § 1692; and (3) racketeering. ECF No. 1, Ex. 1. Individual defendant Alessi filed a
7 motion to dismiss (ECF No. 8) which was granted by the court after a stipulation between the
8 parties (ECF No. 52).

9 A jury trial was held on Ellis's claims against defendant ATC and A&K in early
10 January 2015. Ultimately, at the close of trial, the jury returned a verdict in favor of Ellis and
11 awarded her \$233,000.00 in damages against both ATC and A&K jointly. ECF No. 196. The
12 court then granted Ellis's motion for attorney's fees and costs and awarded her approximately
13 \$145,000 in fees and costs. ECF No. 215. Judgment against ATC and A&K was entered in the
14 amount of \$381,091.04 plus post-judgment interest. ECF No. 218.

15 Following the jury verdict and judgment, the parties reached a stipulated agreement
16 regarding a stay of the judgment. ECF No. 230. Under the parties' stipulation (1) Ellis would
17 refrain from enforcing the judgment; (2) defendant A&K would execute a promissory note in
18 the amount of \$383,990.07 in favor of Ellis; (3) defendant A&K would grant Ellis a first
19 priority security interest in the form of a deed of trust against real property identified as 9512
20 West Flamingo Road, Suite 100, Suite 101, and Suites 102-103; and (4) defendant A&K would
21 make monthly payments to Ellis until the promissory note was repaid. *Id.* The parties'
22 stipulation was approved by the court on December 16, 2015. ECF No. 235.

23 Since the stipulation, A&K has only made three payments to Ellis, has not granted a
24 first priority security interest in the identified real property, and has indicated on multiple
25 occasions to Ellis's counsel that it would not be granting any security interest as required under
26 the stipulation. In response to A&K's continued conduct, Ellis filed a motion for an order to
27 show cause in February 2016 (ECF No. 236), which was granted by the court (ECF No. 245).

28 ³ Individual defendant Alessi is the owner of ATC and the managing and founding partner of A&K.

1 In that order, A&K was ordered to show cause within fourteen (14) days as to why A&K was
2 not complying with the parties' stipulation. *Id.* A&K did not respond to that order. Instead, on
3 December 13, 2016, A&K filed for bankruptcy.

4 On August 22, 2017, Ellis filed a motion for a status check as no further action had been
5 taken by either defendant ATC or A&K, and defendant A&K was still involved in bankruptcy
6 proceedings. ECF No. 248. The court granted Ellis's motion and ordered defendants to respond
7 within ten (10) days why they should not be held in contempt of court for violation of the
8 court's orders. ECF No. 50. On September 25, 2017, dismissed defendant Alessi filed a
9 response to the court's order (ECF No. 252) to which Ellis responded (ECF No. 255). Neither
10 defendant ATC nor A&K filed any response to the court's order.

11 **II. Discussion**

12 The issue before the court is how to proceed on Ellis's motion for an order to show
13 cause which was granted by the court. It is undisputed that ATC and A&K have not responded
14 to any of the court's orders over the last two years, even those prior to A&K's initiation of
15 bankruptcy proceedings. If is further undisputed that A&K did not comply with the terms of the
16 stipulated stay of judgment. Based on the record before the court and the clear indication that
17 there was either fraud on behalf of defendants in drafting the stipulated stay of judgment or a
18 mutual mistake by the parties as to the most basic components of the stipulated stay, the court
19 finds that the most appropriate course of action is to vacate the stipulated stay (ECF No. 235)
20 and allow Ellis to proceed in enforcing the judgment against both ATC and A&K.

21 From the record before the court it appears that defendants, including dismissed
22 defendant Alessi as the manager/managing partner of A&K and ATC, negotiated the stipulated
23 stay negligently, at a minimum, if not fraudulently. It is clear that defendants failed to secure
24 the consent of the property owner of the identified properties, Profondo, LLC ("Profondo"), a
25 Nevada limited liability company, to use the properties as security for the promissory note as
26 defendants had claimed when initially negotiating the stipulation. In fact, Alessi now concedes
27 that the properties which were intended to be pledged as security were not actually owned by
28 any of the defendants at the time of the stipulation.

1 It also appears to the court that the stipulated stay was negotiated and drafted in such a
2 manner as to make it impossible for A&K to comply with the agreement. In his response,
3 Alessi claims that A&K reasonably believed that Profondo would be willing to pledge the
4 properties to secure the A&K note, but that ultimately A&K was informed after the stipulation
5 that Debra Pike, the manager of Profondo, was unwilling to consent to the pledge and refused
6 to transfer the properties through no fault of A&K or the other defendants. However, this
7 concession is disingenuous as Alessi was the manager and registered agent of Profondo for
8 many years during the relevant time period. Further, for the filing year March 2015 through
9 March 2016, the relevant time period of the parties' stipulation, Alessi signed Profondo's
10 Nevada Secretary of State filing as Owner. Further, it has come to the court's attention that
11 Debra Pike may also be related to Alessi. Thus, it appears that Alessi himself at least had
12 control of the properties and the ability to pledge them as security on behalf of A&K had
13 the stay been negotiated in good faith. Instead, Alessi and defendants negotiated and drafted the
14 stay for the sole purpose of frustrating Ellis's ability to collect on the judgment.

15 Moreover, the evidence in this action establishes that Ellis entered into the stipulated
16 stay of her enforcement of the judgment with the expressed expectation that the first deed of
17 trust on the identified properties could be recorded and that A&K, through Alessi, had full
18 power to comply with the negotiated stay of judgment. Therefore, based on the above record
19 and the other evidence and documents submitted to the court, the court finds good cause exists
20 to vacate the stipulated stay approved by the court (ECF No. 235) and lift the stay of judgment
21 entered in this case.

22 IT IS THEREFORE ORDERED that the approved stipulation to stay judgment (ECF
23 No. 235) is VACATED in accordance with this order, and the stay of judgment is LIFTED.

24 IT IS SO ORDERED.

25 DATED this 7th day of September, 2018.


LARRY R. HICKS
UNITED STATES DISTRICT JUDGE